



Original: **English**

No.: **ICC-01/05-01/08**
Date: **22 October 2010**

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch, Judge
Judge Kuniko Ozaki, Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

**Public Document
With Confidential Annex A**

Defence Observations on the "Fourth Transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings"

Source: Defence Team of Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Procedural Background

1. During the Status Conference on 24 September 2010, the Honourable Trial Chamber issued an oral decision to the effect that 850 victims' applications will be notified to the parties, in redacted form, on a rolling basis, in batches of 200 to 300 applications. The parties would then have 10 days within which to present their observations.¹
2. The Chamber subsequently confirmed that the deadline of 10 days would not start to commence until after the Defence had filed its observations on the preceding batch of applications.²
3. The Defence received the Fourth transmission of applications on 1 October 2010,³ and filed its observations concerning the Third transmission of applications on 11 October 2010.⁴
4. The Defence hereby files its observations on the Fourth transmission in accordance with its deadline of 22 October 2010.

II. General Observations

a) The timing of the submission of the applications

5. The observations set out in the Defence's filing of 11 October 2010 concerning the timing of the applications apply with equal force to the current applications.⁵ For example, many were received in The Hague as early as April or June this year. The tardy transmission of these applications to the Defence has severely jeopardised the ability of the Defence to dedicate its limited time and resources to reviewing prosecution disclosure, conducting any necessary investigations concerning upcoming Prosecution witnesses, and preparing its cross-examination strategy.

¹ Transcript, ICC-01/05-01/08-T-25-CONF-ENG, 24 September 2010, pp. 23- 24.

² Email from the Legal Advisor, Trial Division, 8 October 2010.

³ "Fourth transmission to the parties and legal representatives of redacted versions of applications for participation in the proceedings"; ICC-01/05-01/08-914; 1 October 2010; received on 1 October 2010) Containing 176 Annexes: Confidential Annexes 1-176 (ICC-01/05-01/08-913-Conf-Anx1 - ICC-01/05-01/08-913-Conf-Anx176).

⁴ Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings, ICC-01/05-01/08-945.

⁵ Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings, ICC-01/05-01/08-945, at paras 7-12.

6. The Defence therefore reiterates its request that the Chamber should determine a date by which all applications for participation as a victim in the present proceedings must be submitted, and order that any applications not processed by this date be rejected. Applicants should also not be permitted to submit additional information after this date.

b) Redactions

Redactions concerning the date and place of the alleged events

7. The Defence reiterates the concerns set out in its previous filing⁶ and notes that in many cases the current applications are also redacted to such an extent that it is impossible for the Defence to ascertain whether there is a link to the Document Containing the Charges (the DCC). For example, in many applications, the place of the event is redacted to such an extent, that it is not possible for the Defence to ascertain whether there is any nexus between the allegations and the DCC, or even the Prosecution list of evidence.⁷ Indeed, in some applications, since the place where the applicant currently resides is also completely redacted, the only information which the Defence has is that the event took place in the Central African Republic (CAR). Similarly, in some applications, the month of the alleged event has been redacted, rendering it impossible for the Defence to ascertain whether the allegations fall within the temporal scope of the charges.⁸
8. This Trial Chamber emphasised in its decision dated 22 February 2010 that the safeguards which apply to the redaction of information from witness statements, namely, the principles of necessity and proportionality, “are applicable, mutatis mutandis, to the non-disclosure of the identity of victims, and the Chamber notes that in a similar vein, Pre-Trial Chamber I decided that “the scope of [...] redactions cannot exceed what is strictly necessary in light of the applicant's security situation and must

⁶ Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings ICC-01/05-01/08-945, 11 October 2010.

⁷ See for example, a/0999/10, a/1039/10, a/1030/10, a/1011/10, a/0972/10, a/0971/10, a/1300/10, a/1301/10, a/1302/10, a/1302/10, a/1303/10, a/1305/10, a/1307/10, a/1312/10, a/1313/10, a/1315/10, a/1320/10, a/1333/10, a/1335/10, a/1339/10, a/1410/10, a/1411/10, a/1413/10, a/1414/10, a/1415/10, a/1417/10, a/1418/10, a/1419/10, a/1420/10, a/1421/10, a/1423/10, a/1424/10, a/1425/10, a/1426/10, a/1427/10, a/1436/10, a/1438/10, a/1478/10, a/1740/10, a/1742/10, a/1743/10, a/1744/10, a/1745/10, a/1759/10, a/2011/10.

⁸ See for example, a/2216/10 and a/2220/10 which simply provide that the events occurred in redacted 2003.

allow for a meaningful exercise by the Prosecution and the Defence of their right to reply to the application for participation".⁹

9. In applying these principles, the Trial Chamber authorized the following redactions: “i) name of the applicant; ii) name of his or her parents and family members; iii) place of birth; iv) day and month of birth (the year of birth is not to be redacted); v) tribe or ethnic group (only if this could be an identifying feature, leading to the applicant, bearing in mind the overall circumstances); vi) occupation of the victim (only if this could be an identifying feature, leading to the applicant, bearing in mind the overall circumstances); vii) relevant address; viii) phone number and email address; ix) name of other victims of, or of witnesses to, the same incident; x) description of the injury, loss or harm allegedly suffered (only if this could be an identifying feature leading to the applicant bearing in mind the overall circumstances); xi) name and contact details of the intermediary who assisted the victim with the application.”¹⁰ The Trial Chamber did not authorize the redaction of either the place or the date of the alleged crime.

10. Moreover, the Defence vigorously contests the idea that such extensive redactions are necessary to protect the identity of the application. In many cases, a place which has been redacted in one application has not been redacted in others. In other cases, the difficulty for the Defence has arisen from the fact that applicant has provided only the quarter, or other very specific location, which has been redacted. It would have been possible for the Victims’ Protection and Reparations Section (VPRS) to have accompanied the redaction with at least the general area in which the event occurred. Furthermore, in many instances, there is no indication that disclosure of the application form to the Defence would cause any risk to the applicant. For example, as will be developed below, several of these applicants have not requested that their identity be withheld from the Defence.

11. The Defence also disputes whether the present exercise can in any sense be termed ‘meaningful’ if the Defence is unable to assess whether a key element of the criteria to be admitted as a participating victim is fulfilled. The principle of adversarial

⁹ Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, ICC-01/05-01/08-699, 22 February 2010 at para 26.

¹⁰ Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, ICC-01/05-01/08-699, 22 February 2010 at para 33.

proceedings and the right of the Defence under rule 89(1) to be heard, require the Chamber to base its decision on the evidence available the Prosecution and Defence.¹¹ Indeed, it is arguable that if the Chamber renders a prima facie factual determination concerning a particular applicant on the basis of evidence which has not been disclosed to the parties and which might never be disclosed to the parties, the impartiality of the Chamber could be contaminated.¹²

12. In such circumstances, if the protective measure in question renders the right of the Defence to respond to such application illusory, then the appropriate approach would be for the Trial Chamber to either order the VPRS to modify the protective measure in question, as this Chamber expressly envisaged in its decision of 22 February 2010,¹³

¹¹ The right to adversarial proceedings “means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision.” *Vermeulen v. Belgium*, Application no. 19075/91, Judgment of 22 Jan. 1996, para. 33. That Court noted that despite the fact of the independent avocet général's objectivity, the potential for bias and appearance of impropriety were sufficient to constitute violations of Article 6.1. These principles have been endorsed by the ICC: “In keeping with the right to adversarial proceedings, the parties to a trial are afforded the opportunity to have knowledge of all evidence adduced or observations filed.” Situation in the Democratic Republic of the Congo ICC 01/04-135 Decision on the Prosecutor's Application for Leave to Appeal the Chamber's Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 (31 March 2006), footnote 68.

In line with this principle, the ICTY has held that the adversarial process demands that the Chamber should not base its decisions on information which is only available to one of the parties. It would thus be unfair to permit the Prosecution to use the confidential decisions from other Chambers of the Tribunal as the basis for the arguments it puts forward in its submissions, since the Defence teams have no access to them”. The Chamber would therefore “not take into account any arguments based on confidential decisions for which the Prosecution has failed to obtain a public redacted version” *Prosecutor v. Prlić, et al.*, Case No. IT-04-74-T, Decision on a Stojić Defence Request Regarding References to Confidential Decisions Rendered by other Chambers, p. 3 (23 Mar. 2009).

The principle of adversarial proceedings also requires that the parties are aware of the factual basis for a decision so that they can appeal if necessary. As the Appeals Chamber has noted, the Court “must identify which facts it found to be relevant ... [and] ‘indicate with sufficient clarity the grounds on which they based their decision ... [i]t is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him.’” See *Prosecutor v. Lubanga*, ICC-01/04-01/06-772, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” para. 20 (14 December. 2006), citing to *Hadjianastassiou v. Greece*, Application no. 12945/87, Judgment of 16 December 1992, para. 33. The United Kingdom case of *Al Rawi and Others v. Security Service and Others* [2010] EWCA Civ. 482, paras. 12, 16 (4 May 2010) refers to the right to be heard as a fundamental principle and elaborates “[a]nother fundamental principle of our law is that a party to litigation should know the reasons why he won or lost, so that a judge's decision will be liable to be set aside if it contains no, or even insufficient, reason.”

¹² See *Prosecutor v. Krnojejac*, Case No. IT-97-25-PT, Decision on Prosecutor's Response to Decision of 24 February 1999, (20 May 1999), paras. 11-12, describing how a Judge who rendered factual findings on an indictment on an *ex parte* basis would be contaminated from participating in later stages of the case. The ICTY later recognised that this contamination would not arise if the defence was subsequently disclosed the materials which had been provided to the confirming judge, and was provided with an opportunity to contest the factual findings at trial.

¹³ In its decision of 22 February 2010 at para 28, this Trial Chamber noted that in the Lubanga case, the Chamber had modified the redactions which it had initially ordered in the Lubanga case due to the fact that the redactions to birthdates of the applicants rendered it impossible for the parties to submit meaningful observations concerning whether the applicants were under the age of 15 years at the date of the alleged events. In the present case, the place of the alleged events is an issue as according to the Prosecution evidence, the MLC were only

or, if to do so would endanger the security of the victim, then the application must be dismissed or suspended until a less invasive protective measure can be implemented.

The Non-disclosure of the Applicants' Identity to the Prosecutor

13. During the pre-confirmation proceedings, the Pre-Trial Chamber ordered that both the Prosecution and the Defence should receive redacted copies of the applications in order to respect “the principle of fair and equal treatment of the Prosecutor and the Defence”.¹⁴ The Trial Chamber continued this approach, subject to the caveat that “[a]t later stages of the proceedings, for those granted leave to participate, and depending on the level of suggested participation by individual victims and the report of the VWU, this approach will be revisited on a case-by-case basis.”¹⁵ The Defence respectfully submits that this approach is deleterious to the equality of arms between the Prosecution and the Defence, and furthermore, fails to provide the Defence with an adequate remedy in the event that redacted information within applications forms of applicants, who are not granted the right to participate, contains exculpatory elements.
14. In terms of the equality of the parties, during the drafting process of the Statute, the State parties vested the Prosecution with a strong obligation to search for and disclose exculpatory materials in order to lessen the structural inequality of arms between the Prosecution and the Defence.¹⁶ As confirmed by the Appeals Chamber, this prosecutorial obligation to disclose exculpatory information extends to information contained within victim applications.¹⁷ It is, however, necessary for the Prosecutor to be provided with the un-redacted versions of the applications in order to for them to fulfil this obligation.

present in certain villages during limited time periods. Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, ICC-01/05-01/08-699.

¹⁴ Second Decision on the question of victims' participation requesting observations from the parties ICC-01/05-01/08-184, 23 October 2008 at para 13.

¹⁵ Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, ICC-01/05-01/08-699, 22 February 2010, at para 31.

¹⁶ M. Bergsmo and P. Kruger, “Article 54 Duties and powers of the Prosecutor with respect to investigations”, in *Commentary on the Rome Statute of the International Criminal Court*, (O. Triffterer (ed.), 2nd ed., 2008) p1078. See also United Nations General Assembly, “Draft Report of the Preparatory Committee”, 23 August 1996, A/AC.249/L.15, p. 14, cited by the Appeals Chamber in its ‘Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”’, ICC-01/04-01/07-2288, 16 July 2010, at footnote 125.

¹⁷ Prosecutor v. Katanga and Ngudjolo, ICC-01/04-01/07-2288, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”, 16 July 2010, para. 81

15. Whilst it is possible that the parties might eventually be provided with more detailed versions of the application forms corresponding to victims who have been granted a right to participate, it is also possible that the many of the applicants who have been denied the right to participate may have provided exculpatory details in the information which has presently been redacted from their forms. For example, it is possible that these applicants might provide precise dates or locations which contradict Prosecution witness statements, or might refer to the presence of persons whom Prosecution witnesses allege to be elsewhere. Indeed, as was the case in the *Al Bashir* case, the very fact that the applicant presents a perspective of the events, which differs from the Prosecution version of the events contained in the DCC, can result in their being denied the right to participate.¹⁸

16. Finally, disclosure to the Prosecution is merited by the fact that very few of the applicants have requested that their identity be withheld from the Prosecution, and those that have, appear to have misunderstood the question.¹⁹

17. The Defence therefore respectfully requests the Honourable Trial Chamber to order that the unredacted versions of the applications should be disclosed forthwith to the Prosecutor, and order that the Prosecution review these applications in line with its obligation to disclose exculpatory material to the Defence.

The Non-disclosure of the Applicants' Identity to the Defence

18. As noted above, the Trial Chamber envisaged in its decision of 22 February 2010 that in the event that the applicants are granted a right to participate in the proceedings, the

¹⁸ Prosecutor v. Al Bashir, ICC-02/05-01/09-93, Decision on 8 Applications for Victims' Participation in the Proceedings, para. 8.

¹⁹ For example, a/1299/10, a/1300/10 a/1301/10 have requested that their identity be withheld from all entities mentioned in the form, but at the same time, have indicated that they would like that the information they have provided “fassent l'objet d'échange et de communication pour l'évolution dudit dossier devant le Cour”. Similarly, a/1303/10, a/1304/10 a/1305/10, 1/1306/10, a/1307/10, a/1038/10, a/1309/10, a/1310/10, a/1311/10, a/1312/10, a/1338/10 , a/1340/10, a/1347/10, request that their identity be withheld from the Prosecutor, Defence, and State/participant but not the general public. It would be reasonable to conclude that they meant to state the opposite. A/2212/10 has also requested her identity be disclosed to everyone except the Prosecutor for reasons concerning her security– which suggests that the applicant may have misunderstood the question. A2216/10 has requested that her identity be withheld from everyone except the general public and the State, “pour me défendre” – which also suggests that the applicant may have inverted the question. Only one applicant (a/2222/10) has unequivocally asked that their identity be withheld from the Prosecutor.

Chamber would review the status of the redactions.²⁰ As was the case with the previous transmission of applications, many of the present applicants have either not requested that their identity be withheld from the Defence, or have actually expressly requested that it be provided to both parties (including the Defence).²¹ In addressing a similar situation in the *Katanga and Ngudjolo* case, the Trial Chamber ordered the Legal Representatives to liaise with their clients to confirm that the applications could be disclosed to the Defence, and thereafter, authorised their disclosure to the Defence.²²

19. In the event that these applicants are granted a right to participate in the proceedings, the Defence requests the Honourable Trial Chamber to order that un-redacted versions of their applications be submitted to the Defence immediately, in order to facilitate the Defence's preparation for the trial.

20. As concerns the limited number of applicants who have requested that their identity be withheld from the Defence, the Defence submits that these applicants have failed to provide any concrete or objective concerns which would justify the drastic measure of withholding their identities from the Defence during the entire trial proceedings. The Trial Chamber has confirmed that the same principles which apply to the redaction of witness statements also apply to victim applications,²³ in which case, the Chamber must consider "the necessity of the protective measure, including whether it is the least intrusive measure necessary to protect the person concerned; and the fact that any protective measures taken shall not be prejudicial to or inconsistent with the rights of

²⁰ Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, ICC-01/05-01/08-699, 22 February 2010, at para 31.

²¹ a/0742/10, a/743/10, a/0745/10, a/0758/10, a/1303/10, a/1304/10, a/1305/10, a/1306/10, a/1307/10, a/1308/10, a/1309/10, a/1310/10, a/1311/10, a/1312/10, a/1315/10, a/1316/10, a/1317/10, a/1321/10, a/1322/10, a/1323/10, a/1324/10, a/1325/10, a/1326/10, a/1328/10, a/1329/10, a/1330/10, a/1331/10, a/1332/10, a/1336/10, a/1337/10, a/1338/10, a/1399/10, a/1407/10, a/1408/10, a/1409/10, a/1410/10, a/1411/10, a/1412/10, a/1413/10, a/1414/10, a/1415/10, a/1416/10, a/1417/10, a/1418/10, a/1419/10, a/1421/10, a/1422/10, a/1423/10, a/1424/10, a/1425/10, a/1426/10, a/1427/10, a/1436/10, a/1438/10, a/1626/10, a/1722/10, a/1724/10, a/1725/10, a/1726/10, a/1727/10, a/1728/10, a/1729/10, a/1731/10, a/1732/10, a/1733/10, a/1734/10, a/1735/10, a/1736/10, a/1737/10, a/1738/10, a/1739/10, a/1740/10, a/1742/10, a/1743/10, a/1744/10, a/1745/10, a/2212/10/a/2220/10, a/2241/10, a/1351/10, a/1352/10, a/1380/10, a/1381/10, a/1382/10, a/1383/10, a/1384/10, a/1385/10, a/1386/10, a/1387/10, a/1388/10, a/1389/10, a/1390/10, a/1391/10, a/1392/10, a/1393/10, a/1394/10, a/1395/10, a/1396/10, a/1398/10, a/1400/10.

²² Prosecutor v. Katanga and Ngudjolo, Deuxième décision relative à la divulgation de l'identité des victimes aux parties ICC-01/04-01/07-1650, 18 November 2009 at para 4-5.

²³ Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants, ICC-01/05-01/08-699, 22 February 2010 at para 26.

the accused and a fair and impartial trial”.²⁴ The Appeals Chamber has also held that in assessing whether procedural protective measures such as redactions and delayed disclosure are appropriate, “if less restrictive protective measures are sufficient and feasible, a Chamber must choose those measures over more restrictive measures.”²⁵

21. In the event that these applicants are granted a right to participate, the Defence requests the Trial Chamber to order the Victims and Witnesses Unit to conduct an assessment as to firstly, whether there is an objective basis to consider that protective measures are required for the individual applicants in question, and secondly, whether there any other protective measures which could achieve the same objective.

c) Failure of the Applicants to Link the Alleged Harm to Mr. Bemba

22. The Defence submits that the observations set out in its filing of 11 October 2010 equally apply to the current applications.²⁶ In many instances, the applicants attribute responsibility to the ‘MLC/Banyamulenge’ at a time and location which either predates their arrival at this location or postdates their departure. To admit such applicants would not be consistent with the previous finding of this Trial Chamber that the *prima facie* standard would be met if the Chamber had verified on the basis of the material before it that the “troops allegedly controlled by the accused were at the various locations described by the applicants at the time of the material events [...]”.²⁷

23. The Defence further underscores that in the absence of any information concerning the physical perpetrators of the alleged harm,²⁸ it is not possible to impute any form of responsibility to Mr. Bemba as a commander. In this regard, the ICTY Appeals Chamber has confirmed in its Appeals Judgment of 3 July 2008 in the *Prosecutor v.*

²⁴ Prosecutor v. Katanga and Ngudjolo, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", ICC-01/04-01/07-475, 13 May 2008 at para 67.

²⁵ Prosecutor v. Lubanga, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81, ICC-01/04-01/06-773, 14 December 2006, at para 33

²⁶ Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings ICC-01/05-01/08-945, 11 October 2010, at paras 20-23, citing in particular, Prosecutor v. Al Bashir, ICC-02/05-01/09-93, Decision on 8 Applications for Victims' Participation in the Proceedings, para. 8.

²⁷ Prosecutor v. Bemba Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, ICC-01/05-01/08-807, 30 June 2010 at para 94.

²⁸ See for example, a/1312/10, and a/1740/10.

Oric that unless the physical perpetrators are identified as subordinates of the defendant, liability as a commander does not arise.²⁹

d) Specificity of the Charges

24. The Defence also reiterates its submissions from its filing of 11 October 2010 to the effect that the applicant must establish that the harm resulted from an incident which has occurred on a date and location which is explicitly referred to in the incidents set out in the operative section of the counts in the DCC.³⁰ This would also be consistent with the approach of the Trial Chamber in its decision of 30 June 2010, in which the Chamber dismissed applications which had failed to establish a nexus with the specific incidents, which comprised the charges in the DCC.³¹

e) Identification Documents

25. The Defence requests the Honourable Trial Chamber to reject applications which are supported by identification documents which do not fall within the explicit categories delineated by the Trial Chamber in its decision of 22 February 2010.³² In particular, the Defence further notes that that some applicants have submitted pieces of paper which have been signed by the chief of the village. The Defence submits that this type of documentation is not sufficient to establish the identity of the applicant. Moreover,

²⁹ At para 35.

³⁰ Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings, ICC-01/05-01/08-945, at paras 28-32.

³¹ "89. Although, depending on the circumstances, the result of shelling houses may well be not only the destruction of property, but also serious injury or death, the charges in this case were confirmed on a precise and limited basis. The allegation of murder does not include killing by shelling, and accordingly the interests of these three victims are not reflected in the confirmed charges. It follows that their applications are refused, on the basis of the position currently before the Chamber." Prosecutor v. Bemba Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, ICC-01/05-01/08-807, 30 June 2010.

³² In its decision of 22 February 2010, the Trial Chamber endorsed the approach employed by the Pre-Trial Chamber, and confirmed that the following documents would be accepted as proof of identity: "i) «certificat de nationalité», (ii) «permis de conduire», (iii) «passeport», (iv) «livret de famille», (v) «extrait d'acte de mariage», (vi) «acte de mariage», (vii) «extrait d'acte de décès», (viii) «acte de décès», (ix) «jugement supplétif», (x) «extrait d'acte de naissance», (xi) «acte de naissance», (xii) «nouvelle carte d'identité», (xiii) «ancienne carte d'identité qui n'est plus en vigueur», (xiv) «carte professionnelle», (xv) «carte d'association», (xvi) «récépissé de dépôt de demande de carte nationale d'identité», (xvii) «carte de commission d'emploi», (xviii) «carte de député», (xix) «déclaration de naissance», (xx) «carte d'identité pastorale», (xxi) «testament», and (xxii) «livret de pension». » In the event that an applicant does not possession such a document, the Chamber indicated that it would "consider a statement signed by two witnesses attesting to the identity of the victim applicant and including, where applicable, the relationship between the victim applicant and the person acting on his or her behalf. The statement should be accompanied by proof of identity of the two witnesses as set out above". Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants ICC-01/05-01/08-699 22 February 2010 at para 36.

these types of documents were not approved by the Trial Chamber, and have not been witnessed by two independent witnesses, who have provided copies of their own identification documents. In light of the fact that the name of the chief of the village has been consistently redacted, it is also not possible to ascertain whether this person has also submitted an application form to participate, or is related to someone who has submitted an application to participate in the proceedings. If this were the case, the chief of the village would be unable to attest or validate a document in connection with which he or she has a personal or financial interest.

26. The Defence further requests the Trial Chamber to reject any applications, which have only furnished copies of electoral cards as proof of identification. Electoral cards do not fall within the category of documents approved by this Trial Chamber,³³ and are reportedly very susceptible to fraud and forgery. For example, the International Crisis Group has reported that the electoral commission in CAR “is loyal to the president and widely dysfunctional”, and moreover, that “[m]anipulations of voter registration are numerous, including demographic projections, tilted in favor of the president’s party”.³⁴ In light of the fact that this case is concerned with the conflict between the present and former Presidents of CAR, it would be highly inappropriate to predicate victim participation on a form of documentation which is highly susceptible to political influence, and bias against the defendant. Electoral cards are therefore insufficiently reliable to support the active participation of an alleged victim in proceedings before the Court.
27. The Defence also incorporates by reference its submissions from its previous filings concerning the documentary requirements for moral harm.³⁵

³³ Prosecutor v. Bemba, Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants ICC-01/05-01/08-699 22 February 2010 at para 36.

³⁴ T Viroulon, The Dilemma of Electoral Assistance in Central Africa, 30 June 2010, International Crisis Group Report, <http://www.crisisgroup.org/en/regions/africa/central-africa/viroulon-the-dilemma-of-electoral-assistance-in-central-africa.aspx>.

³⁵ See for example, Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings, ICC-01/05-01/08-945, 11 October 2010, at paras 36-37.

f) Legal language Used in Applications

28. The Defence reiterates its concerns regarding the rote legal language utilised in the applications, which could not possibly emanate from the applicants themselves,³⁶ and therefore requests the Trial Chamber to dismiss these applications.³⁷

29. In addition to the general and overarching problems which characterise the applications contained in the Fourth transmission, the Defence also submits on a particular level that none of the applications fulfil the requirements to warrant the granting of participatory rights as victims in the present proceedings, and should be rejected on the grounds set out in the attached Annex.

FOR ALL THE ABOVE REASONS:

30. The Defence of Mr. Jean-Pierre Bemba respectfully requests that the Chamber reject the 176 requests for participation pursuant to Rule 89(2) of the Rules of Procedure and Evidence.



Aimé Kilolo Musamba
Associate Counsel



Nkwebe Liriss
Principal Counsel

Dated this Friday, 22nd Day of October 2010

At The Hague, The Netherlands

³⁶ See for example, a/0851/10, a/0853/10, a/0854/10, a/0902/10, a/0938/10, a/0951/10, a/0955/10, a/0983/10, a/0999/10, a/1039/10, a/1269/10, a/1288/10, a/1369/10, a/1478/10, a/1490/10, a/1493/10, a/1499/10, a/1515/10, a/1521/10, a/1545/10, a/1561/10, a/1577/10, a/1585/10, a/1597/10, a/1778/10, a/1800/10, a/1815/10, a/1926/10, a/1940/10, a/1949/10, a/1955/10, a/1977/10, and a/1987/10.

³⁷ See Defence Response to the Third Transmission of Victims' Applications for Participation in the Proceedings, ICC-01/05-01/08-945, 11 October 2010, at paras 33-35.